

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0338**  
**Sales Tax**  
**For Tax Years 2002-05**

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**ISSUE**

**I. Sales Tax—Estimated Sales**

**Authority:** IC § 6-8.1-5-1.

Taxpayer protests the Department's estimations of sales for the years in question.

**STATEMENT OF FACTS**

Taxpayer was a furniture store in Indiana. The Indiana Department of Revenue ("Department") conducted an audit and determined that Taxpayer failed to report sales tax for all of 2002, January through September of 2003, all of 2004, and January through September of 2005. As a result of this audit, the Department issued proposed assessments for sales tax, penalties and interest. Taxpayer protests that the sales amounts were not as high as the Department estimated, and that the business has since gone bankrupt and there is no money to pay the assessments. Further facts will be supplied as required.

**I. Sales Tax—Estimated Sales**

**DISCUSSION**

Taxpayer protests the Department's overestimation of the amount of sales for the tax years at issue. Taxpayer also states that the business has gone bankrupt and that there is no money to pay any assessments. The Department refers to IC § 6-8.1-5-1(b), which states that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made. The purpose of the protest process is to allow a taxpayer to satisfy the burden imposed by IC § 6-8.1-5-1(b). Therefore, the administrative hearing and this Letter of Findings properly address whether or not the proposed assessments are correct. The ability of a taxpayer to pay those assessments is not properly addressed in a Letter of Findings. The Department has other avenues to address a taxpayer's ability to pay an assessment.

Under IC § 6-8.1-5-1(a), the Department may use the best information available to make a proposed assessment for unpaid tax. Taxpayer has provided sufficient documentation to establish that there was extensive road work for an extended period of time in front of the shopping center where Taxpayer was located. Taxpayer states that this road work severely hindered its customer's ability to physically get into Taxpayer's store. Taxpayer provided sufficient documentation to establish that Taxpayer entered into bankruptcy shortly after the time when the road work was undertaken.

Unfortunately, this only addresses part of Taxpayer's burden under IC § 6-8.1-5-1(b). Taxpayer states that it no longer has access to the sales records for the audit period. While it is reasonable to believe that the road work adversely affected Taxpayer's sales for the audit period, Taxpayer was unable to provide any alternative sales figures or any documentation which would support its protest for the audit period. Merely stating that the Department's figures are too high is not enough to prove that those figures are wrong.

In conclusion, Taxpayer has not met its burden of proving the Department's proposed assessments wrong, as required by IC § 6-8.1-5-1(b). While Taxpayer's argument is reasonable, without reasonable alternative figures and documentation supporting those figures, the Department is unable to agree with Taxpayer's argument. As previously stated, the Department has other methods to handle a taxpayer's inability to pay assessments.

#### **FINDING**

Taxpayer's protest is denied.

WL/BK/DK April 30, 2007